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1 CERTIFICATE

2 I HEREBY CERTIFY that the
3 proceedings, evidence and objections are
4 contained fully and accurately in the
5 stenographic notes taken by me on
6 Wednesday, March 28, 2007, and that this is
7 a true and correct transcript of same.

8
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10
11
12 Cynthia A. Whyte
13
14 Cynthia A. Whyte, RPR

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Marabito, Allen J.

4/5/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Certified Copy

Case No. 04-1565

VIDEO DEPOSITION OF ALLEN J. MARABITO
April 5, 2007

ARLIN M. ADAMS, Chapter 11 Trustee of the
Post-Confirmation Bankruptcy of Estates of Coram
HEALTHCARE CORPORATION, and of CORAM, INC., a
Delaware corporation,
Plaintiffs,

vs.

DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J.
CASEY, L. PETER SMITH, and SANDRA L. SMOLEY,

Defendants.

APPEARANCES:

SCHNADER HARRISON SEGAL & LEWIS, LLP
By Barry E. Bressler, Esq.
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
215-751-2050
bbressler@schnader.com
Appearing on behalf of Plaintiffs.

KEKER & VAN NEST, LLP
By Laurie Carr Mims, Esq.
710 Sansome Street
San Francisco, California 94111-1704
415-391-5400
lmims@kvn.com
Appearing on behalf of Defendant
Daniel D. Crowley.

Also Present: Carie Finegan, Videographer

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1 now?

2 (Deponent examined exhibit.)

3 A Yes. But it's been undercut, and so while
4 it's accurate, it apparently was not fully expansive
5 in a description of the consulting arrangement that
6 Mr. Crowley had with Cerberus.

7 Q That wasn't my question, though. Is
8 the -- the information that is written here
9 accurate, in your opinion?

10 MR. BRESSLER: I'll object to the form.
11 His answer was explanatory and complete, but he may
12 answer.

13 A At the time that this was written I
14 believed that it was accurate and I was convinced of
15 its actuality.

16 Q (By Ms. Mims) Did anyone from the -- the
17 Kasowitz firm ask you for more information about
18 Mr. Crowley's consultancy with -- to Cerberus?

19 MR. BRESSLER: I'll object to the form.
20 Do you mean at this time?

21 Q (By Ms. Mims) At this time.

22 A It -- I don't recall being asked specific
23 questions about Mr. Crowley's consultancy, as you
24 put it, during the process of perfecting this
25 document by the Kasowitz firm.

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1 Q Do you recall asking anyone, including
2 Mr. Crowley, for more information about this issue?

3 A The --

4 Q At this time.

5 A At this time I would have said or asked,
6 I -- and I would have said, you know, Dan, is this
7 an accurate description of the information, or, you
8 know, is this an accurate portrayal of the
9 information to be included? Is -- you know, is this
10 what we're going to use? And the answer to that
11 would have been yes, because it's in this document.

12 (Pause.)

13 Q Do you remember any conversations with
14 anyone from the Kasowitz law firm regarding the
15 importance of this issue to this document?

16 A No.

17 Q Do you recall anyone from the Kasowitz
18 firm telling you that -- that the relationship
19 between Crowley and Cerberus was in very -- was
20 important for this document?

21 MR. BRESSLER: I'll object to the form,
22 but he can answer.

23 A Before this document?

24 Q (By Ms. Mims) For this document. Not
25 before. Not before. For this document.

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1 A Oh, for this document.

2 Q Important for this document. In
3 conjunction with this document.

4 A No, I don't -- I don't think this received
5 particularized -- to the exclusion of all else. It
6 was just part of the document. In the process, the
7 document is developed, it is exchanged back and
8 forth with the outside attorneys having, if you
9 will, the final cut at the document, and then
10 preparatory to the filing, it is read through,
11 approved by the attorneys as to its legality and its
12 creation, and then it's ready for filing, and that's
13 perfected on the law firm side of the process.
14 We're -- I'm not -- the company's not sitting there
15 saying, Hey, this is a sufficient legal document,
16 let's go ahead and file it.

17 Q So you do not recall any particularized
18 attention to this issue --

19 MR. BRESSLER: Object to the form.

20 Q (By Ms. Mims) -- in connection with this
21 document.

22 MR. BRESSLER: Object to the form, asked
23 and answered. He can answer.

24 A No.

25 MS. MIMS: Let's break for lunch.

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1 Q Yes.

2 A "Effective August 1st, 1999, Mr. Crowley
3 and an affiliate of Cerberus Partners, L.P.
4 ('Cerberus') a party to the company's
5 debtor-in-possession financing agreement, Senior
6 Credit Facility and Security Exchange Agreement,
7 executed a three-year employment agreement whereby
8 Mr. Crowley is paid \$960,000 per annum, plus the
9 potential of performance related bonus
10 opportunities, equity options and fringe benefits.
11 Such agreement is subject to automatic one year
12 extensions unless either party provides written
13 notice within 60 days of the original expiration
14 date or subsequent renewal dates. The agreement
15 further provides that the Cerberus affiliate can
16 unilaterally terminate the arrangement at any time
17 by written notice; however, certain severance
18 payments would be triggered by such termination.
19 The services rendered by Mr. Crowley include, but
20 are not limited to, business and strategic
21 healthcare investment advice to executive management
22 at Cerberus and its affiliates. Moreover,
23 Mr. Crowley is Chairman of the Board of Directors of
24 Winterland Productions, a privately held affinity
25 merchandise company, which is a Cerberus affiliate

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1 portfolio investment. On January 2nd, 2001,
2 Winterland voluntarily filed for protection under
3 Chapter 11 of the United States Bankruptcy Code in
4 the Northern District of California."

5 Q Does --

6 A End of paragraph.

7 Q Does this reflect -- does this refresh
8 your recollection -- recollection as to whether the
9 SEC filings made by the company disclosed that it
10 was an employment agreement?

11 MR. BRESSLER: I'll object to the form
12 only as to which SEC filings.

13 Q (By Ms. Mims) As -- this SEC filing.

14 A It -- it focuses my recollection. I -- I
15 recall that subsequent to its identification it was
16 incorporated at the next public filing.

17 Q Do you -- do you remember if you took part
18 in drafting this language?

19 A I would not have been the draft person.

20 Q Did you review this language?

21 A Yes.

22 Q Do you think it accurately describes the
23 employment agreement?

24 A It -- as best I can recollect, yes.

25 Q And in the paragraph you read --

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1 A Yes.

2 Q -- it stated that it was a three-year
3 employment agreement; is that correct?

4 A Yes.

5 Q And then it went on to say, "whereby
6 Mr. Crowley is paid" --

7 A Yes.

8 Q " -- 960,000 per annum"?

9 A Yes.

10 Q Does this refresh -- refresh your
11 recollection regarding the fact that you knew
12 Mr. Crowley was still being paid by Coram as of
13 April 2001?

14 MR. BRESSLER: I'll object to the form.

15 A You mis -- Mr. Crowley was being paid by
16 Coram.

17 Q (By Ms. Mims) By Cerberus.

18 A And he was also being paid by Cerberus,
19 yes. I believe that's correct.

20 Does this have a signature date on the
21 back of it?

22 (Deponent examined exhibit.)

23 Q Sometimes they're in the middle. I don't
24 see it, but I'll represent to you that this was the
25 filed version since it was -- it's on the SEC's Web

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1 site.

2 MR. BRESSLER: Would you like me to direct
3 the witness' attention?

4 MS. MIMS: Sure. Thank you.

5 A Got it. Okay. April 16th -- April 16th,
6 2001 was the filing date of this document. So at --
7 at that time I would have known.

8 Q (By Ms. Mims) That Mr. Crowley --

9 A Crowley was receiving --

10 Q Was still receiving.

11 A Still receiving salary from Cerberus.

12 Q And that salary was the 960,000 per annum?

13 A Yes.

14 Q And that's the same as the 80,000 per
15 month?

16 A Yes.

17 Q So you did know as of April 16th, 2001
18 that Mr. Crowley was still receiving 80,000 --

19 A Yes.

20 Q -- per month.

21 A Yes.

22 Q Was this public filing reviewed by Coram's
23 board?

24 A Yes. It's made available to them for
25 their review.

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1 Q Was it made available for Goldin
2 Associate's review?

3 A I'm sure if they were interested -- if
4 they were still an interested party at that time,
5 yes.

6 Q To give you a little chronology, they were
7 retained in March of 2001, so that would be
8 preceding April 2001.

9 A And -- and I would fully expect that
10 their -- that the steps that they would take to know
11 about the corporation, so-called due diligence,
12 would have led them to this document, which they
13 would have read. I assume they would have read.

14 Q Isn't it true that anyone who was
15 interested in Coram could have accessed this
16 document and read this paragraph about Mr. Crowley's
17 employment agreement with Cerberus?

18 A I -- I think that's a true statement

19 Q And do you agree with me that this
20 paragraph makes clear that Mr. Crowley is currently
21 being paid, as of April 16th, 2001, 960,000 per
22 annum?

23 A Yes.

24 MR. BRESSLER: I'll object to the form.

25 A Yes.

220

1 STATE OF COLORADO)

2) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER)

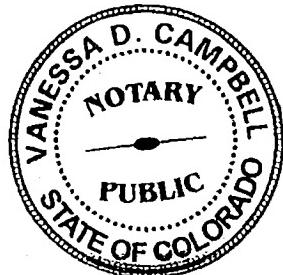
4 I, Vanessa D. Campbell, do hereby certify
5 that I am a Registered Professional Reporter and
6 Notary Public within the State of Colorado; that
7 previous to the commencement of the examination, the
8 deponent was duly sworn to testify to the truth.

9 I further certify that this deposition was
10 taken in shorthand by me at the time and place
11 herein set forth and was thereafter reduced to
12 typewritten form, and that the foregoing constitutes
13 a true and correct transcript.

14 I further certify that I am not related
15 to, employed by, nor of counsel for any of the
16 parties or attorneys herein, nor otherwise
17 interested in the result of the within action.

18 In witness whereof, I have affixed my
19 signature and seal this 12th day of March, 2007.

20 My commission expires November 6, 2010.



21
22 *Vanessa D. Campbell*
23 Vanessa D. Campbell, RPR, CRR
24 216 - 16th Street, Suite 650
25 Denver, Colorado 80202

Crowley, Daniel D.

4/6/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, Chapter 11
Trustee of the Post-Confirmation
Bankruptcy Estates of CORAM
HEALTHCARE CORPORATION, a Delaware
Corporation, and of CORAM, INC.,
a Delaware Corporation,

Certified Copy

Plaintiff,

CASE NO. 04-1565

vs.

DANIEL D. CROWLEY; DONALD
J. AMARAL; WILLIAM J. CASEY;
L. PETER SMITH; and SANDRA
L. SMOLEY,

Defendants.

---oo---

VIDEOTAPED DEPOSITION OF DANIEL D. CROWLEY

Friday, April 6, 2007

---oo---

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CSR No. 10523

Crowley, Daniel D.

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1 Q. And Coram filed Chapter 11 bankruptcy on
2 August 8, 2000?

3 A. Approximately that date.

4 Q. At some point did you perform work for Cerberus
5 related to a company known as Winterland?

6 A. Yes, I performed services for Cerberus related
7 to Winterland.

8 Q. And did you begin to perform those services for
9 Winterland before you became Coram's CEO?

10 MR. PETERS: Objection. Lacks foundation.

11 You may answer.

12 THE WITNESS: Yes. I was involved with
13 Winterland many months before I heard of Coram or became
14 involved officially with Coram.

15 BY MR. BARKASY: Q. Now, do you recall any of
16 the projects that you worked on for Cerberus from the
17 time you entered into your agreement with Mr. Feinberg
18 for the advisory position in 1998 and when you began to
19 work on Winterland?

20 A. Well, again, if you have something to show me,
21 I'd be happy to look at it.

22 As to my recollection, I worked on many
23 different projects, some short in duration, some longer.
24 Some on the telephone, some in New York, some at
25 potential clients.

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1 Some of the names that I would recall I worked
2 with Cerberus entity, Black Acre, on a Beverly Nursing
3 Home transaction, to -- trying to understand the
4 management and the business plan and the viability of it
5 and the likelihood of it working out right.

6 And give thoughts as to reimbursement on
7 Medicare and in the states in which the nursing homes
8 were going to operate as to a potential liabilities for
9 an investor under Medicare and Medicaid and
10 reimbursement rates related to that.

11 I gave some advice on HRH Sterrit, which was
12 more of a systems effort, rather than health care. But
13 we had systems people and did a review of their hardware
14 and software and technology and work systems design.

15 Provided Cerberus's portfolio manager with an
16 assessment as to whether the company was scalable and
17 could do the kinds of things that Cerberus was being
18 told it could do. And we give a view on that.

19 There were changes going on back in the -- what
20 was called HCFA, Health Care Financing Agency. It was
21 being transitioned over to a new entity called CMS, and
22 there were reductions in the rates of reimbursement on
23 various kinds of care and services that Medicare was
24 proffering.

25 Cerberus sought a view of what those changes

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1 might be and whether there would be a negative impact on
2 a couple of the entities they were interested in.
3 Particularly, there was a subacute care company by the
4 name of Vencor that provided care for folks that had
5 been paraplegic or quadriplegic and had gone through
6 their benefits and were on Medicaid and were being
7 warehoused in the hospitals.

8 And how that might work and whether new
9 reimbursement rates and laws as related to Medicare
10 would be helpful or harmful. And did quite a bit of
11 inquiry in HCFA and CMS and various appropriation
12 committees and all of that, to try and understand it and
13 give them a view based on my own experiences and such.

14 And, of course, Vencor had nursing homes and
15 the notion of going to -- away from Medicaid patients to
16 pure pay private patients was being discussed. And I
17 was asked my view about that and ultimately was asked
18 for a recommendation as to whether I thought the
19 business plan, the management team, were credible and
20 should be an investment.

21 And an investment was made, and I was asked if
22 I knew anyone that might serve properly as a board
23 member. And I recommended a fellow who ultimately
24 became a board member.

25 I worked on an HMO in Southern Florida. And my

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1 current memory is it was called PHP. And we had a
2 fellow who could do actuarial work as to the claims
3 reserving in it and the pricing and the risk that was
4 being taken on an underwriting basis.

5 And our view of what reimbursement was in
6 Florida and whether this HMO had -- reasonably it could
7 meet its plan and be profitable and the business plan,
8 the management team, due diligence for it. And I
9 recommended Cerberus invest in that, and they did.

10 We were asked about Magellan. Magellan was an
11 employee assistance plan. It was owned by the Texas
12 Pacific Group.

13 Cerberus sought to know whether it ought to
14 invest in that. And Magellan had purchased the Charter
15 Behavioral Hospitals, and it was not working out for
16 them or TPG.

17 And having done due diligence and met the
18 management team and read the business plan, done the
19 analysis, explored the divestiture that was underway to
20 a read of the behavioral hospitals, I recommended, you
21 know, that Cerberus not invest.

22 And ultimately it turned out to be the right
23 choice for Cerberus. They avoided a tremendous loss
24 there.

25 You know, there may have been any other of

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1 other investments, and I -- I do think there were other
2 investments.

3 Sun -- I'm going to say Sun Nursing Homes, we
4 did some work for them. I did some work for them on
5 Sun, understanding the mix of their business and the
6 states they were operating and the reimbursements and
7 the rules and the laws, and waved them off of Sun. And
8 it turned out to be a right choice.

9 You know, the company was interested in a
10 medical record, electronic medical record, and I was
11 asked to come to New York and meet with the management
12 team, review the business plan and assess whether I
13 thought that that would make some sense, and waved them
14 off of that one. It turned out to avoid them a, you
15 know, very substantial loss.

16 I was asked to look at a hospice company in
17 Florida and meet with the management team and look at
18 the business plan and review the reimbursement rates and
19 risks and rewards.

20 And I recommended that Cerberus invest in that,
21 and it turned out to be a terrific deal. And the
22 management was great and the plan was right, the
23 reimbursement was right. The rules were right. And mix
24 and pricing and units and places that they were made
25 lots of sense. And Cerberus made, you know, substantial

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1 profit on that.

2 And from time to time, Dan Wolf would call
3 about portfolio companies and ask my view. Having had a
4 fairly extensive, global, wide and deep health care
5 background, I could give him my view.

6 And Bob Davenport, who had a different
7 portfolio, new and prospective investments -- and Seth
8 Plattus and Ron Goldstein and Steve Feinberg and I -- I
9 don't remember his partner's name at this time, who
10 called from time to time, seeking a view of risk/reward
11 on investments and changes in the -- see changes in the
12 reimbursement and government rules here, there and
13 everywhere.

14 And so it was episodic. Up and down. It
15 depended on what they had. And some days would go by
16 and I wouldn't talk to them at all. Some days would go
17 by, and, gosh, the phones would be ringing. So I like
18 that.

19 (Marked for identification purposes,
20 Exhibit 1.)

21 MR. BARKASY: Did we mark that Crowley 1?

22 THE REPORTER: Correct.

23 BY MR. BARKASY: Q. Mr. Crowley, is Exhibit
24 Crowley 1 a letter from you to Steven Feinberg, general
25 partner of Cerberus Partners, dated April 9, 1999?

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1 A. Yes.

2 Q. What were you being paid \$80,000 a month by
3 Cerberus to do?

4 A. Do you want me to recite that -- all the
5 testimony I gave earlier? I'm happy to do it.

6 Q. Let me ask --

7 MR. PETERS: Go ahead and answer the -- answer
8 the question.

9 BY MR. BARKASY: Q. Answer the question how
10 you want to answer it.

11 A. Okay. Well, when I originally started with
12 Cerberus, both Feinberg and myself had no idea the
13 extent to which the Cerberus portfolio managers and the
14 Cerberus organization would take up my time.

15 And, you know, originally we talked about
16 \$10,000 a day and, you know, how many hours would that
17 be and just had a quick general conversation and a
18 handshake.

19 And then it started to ramp up and was taking
20 more time. And then it was taking more time. And then
21 we adjusted it. And it was taking more time.

22 And at some point I was being called, you know,
23 at all hours of the day and night. Monday, Tuesday,
24 Wednesday, Thursday, Friday, Saturday, Sunday. It
25 didn't matter if it was the Fourth of July or, you know,

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1 Cynthia's birthday or anniversary or Christmas.

2 And the amount of time was different than he
3 thought -- Steve Feinberg thought and I thought, and I
4 found myself fielding calls from Ron Goldstein on
5 Kindred and Seth Plattus on something else and
6 Bob Davenport on something else and Dan Wolf on
7 something else and Peter Wolf on something else and
8 Steve on something else.

9 And, you know, the calls were coming all over
10 the place. And where I had thought that I would have
11 the ability to have other clients, and I did have some,
12 and Steve knew that.

13 (Reporter clarification.)

14 THE WITNESS: I had some and Steve knew that.

15 That I was suffering in my ability to have
16 other business. And so their rates were going up, and
17 he was fine with that.

18 And I'm not sure when this -- this
19 memorializing has a certain date, but I do believe I was
20 being paid that before then. It had gone from something
21 to something to 60 to 80. And, you know, I wished I had
22 more than an handshake, and this was an attempt to
23 memorialize that.

24 (Marked for identification purposes,

25 Exhibit 14.)

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1 THE WITNESS: My understanding was that this
2 document said that other portfolio companies, except to
3 say that it -- by the print excluded Coram and by the
4 meeting of the minds excluded Coram and it didn't
5 include Coram.

6 But those portfolio companies that I advised
7 on, to the extent that they made any money or generated
8 a return, that my efforts would result in compensation
9 for me.

10 BY MR. BARKASY: Q. Well, what portfolio
11 companies did you work on?

12 A. Well, for example, I think -- for example, we
13 talked with Kindred. And I never really knew the
14 magnitude of the investment that Cerberus made in
15 Kindred, but I tried to learn it after repeated attempts
16 of asking for a reconciliation from Cerberus that I
17 never got.

18 I went online and looked at the public
19 documents on Kindred and found investments that Cerberus
20 had made in there. And it was in the 75- to
21 \$100 million neighborhood.

22 And, you know, I tried to track the equity and
23 the performance on it, and, you know, at some point in
24 there my recollection is there was a triple in the
25 equity on -- the Cerberus investment would have yielded

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1 an eight-digit reward to me, compensation, for the
2 advice and counseling work I did on it. So that kind of
3 thing.

4 And Black Acre got involved as a Cerberus
5 subsidiary and Beverly Nursing Homes, because I was
6 doing a spinout in Texas and Florida of their nursing
7 homes, and I did quite a lot of work on that. And they
8 did make an investment.

9 And I was told by Peter Wolf, I believe, at
10 Black Acre, that they had an annualized return at
11 35 percent, which would have put me into being
12 compensated for the advice and counsel I gave on that.

13 And I remember being told that PHP was much
14 like that in Florida and that they had a baked-in
15 35 percent return, and that I would have been in the
16 money on -- on that.

17 And I advised on Sterritt, and I know they made
18 money on Sterritt. And I didn't get any upside on
19 investments that they didn't make. I didn't have the
20 opportunity to participate and earn anything on -- on
21 loss avoidance.

22 You know, so, for example, in Winterland, Rich,
23 at some point it was roughly \$45 million worth of debt
24 on Winterland. And through my work, it was trimmed down
25 to \$20 million worth of debt. And so I saved the

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1 company \$24 million. I didn't get anything on that.

2 And so it was about the gain and my ability to
3 be compensated in companies in which there were a gain
4 other than Coram.

5 Q. Your potential bonus with regard to the upside
6 in Winterland was increased from 20 percent in the
7 incentive agreement to 30 percent in this agreement with
8 Cerberus that you entered into in November 1999;
9 correct?

10 A. Yeah. I'd been -- I'd been asking for an
11 increase in Winterland vis-a-vis my engagement and
12 activity and value creation. And, you know, I saved
13 that company -- it didn't end up that way in the end,
14 but I saved that company and saved a couple hundred jobs
15 and made a material difference and -- you know, both the
16 equity and the noteholders and management; the vendors
17 and the employees.

18 And I went into it with the understanding I
19 would receive an opportunity to earn a portion of a gain
20 if there was one. And I thought that it ought to be
21 greater, and I'd been asking. And this reflected that
22 ask.

23 Q. And as to portfolio companies other than
24 Winterland, you were entitled to a bonus of 20 percent
25 of Cerberus's upside; is that correct?

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1 MR. PETERS: Oh, I see.

2 MR. BARKASY: It's the letter to Mr. Feinberg.

3 BY MR. BARKASY: Q. You wrote to Mr. Feinberg,
4 And if I am the guy, what is the upside that covers this
5 effort?

6 And my question, Mr. Crowley, is did
7 Mr. Feinberg ever answer that question for you, what the
8 upside was that covered your effort?

9 A. Well, this -- this paragraph is saying, first
10 off, I'm not sure I'm the person. And if I am the
11 person, and I can improve this company and save this
12 company and generate earnings and profits and save these
13 jobs and turn this into a better company, how am I
14 compensated? How do I participate for this performance?

15 And, look, let's get everybody around a table,
16 because I may not be the person. I'm not sure I want to
17 be the person. But put all the people in one room, and
18 let's talk about it and see what everybody thinks.
19 That's -- that's what I was thinking back then.

20 (Marked for identification purposes,

21 Exhibit 18.)

22 THE VIDEOGRAPHER: Twenty minutes.

23 BY MR. BARKASY: Q. Mr. Crowley, do you
24 recognize Exhibit Crowley 18?

25 A. Yes, I do recognize it.

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1 Q. What is it?

2 A. Well, this is a letter from myself to
3 Steve Feinberg in -- on the 12th of November 1999 in
4 which I was exploring ways to be compensated if I were
5 to accept the Coram position.

6 If I could save that company, if I could
7 improve that company, if I generated earnings, to be
8 paid fairly for the contribution that I might make.

9 And this piece -- of course I testified about
10 it in open court and in depositions endlessly, but I was
11 not an employee of Coram. I wasn't an officer of Coram.
12 I wasn't a director of Coram. I wasn't in charge of
13 Coram. I wasn't anything with Coram. I wasn't even
14 sure I would be, as I wrote this letter.

15 But I had had a conversation with Don Amaral,
16 who was the chairman, and I think he represented that he
17 was the largest individual shareholder, back and forth
18 around what do you want to do with the company after
19 Smith quit.

20 He said he didn't know who was going to step
21 in. I said I'll be a crisis manager. I'd like to try
22 that.

23 I met with the board. Made a proposal. They
24 weren't interested in that.

25 He was going to hire a recruiter and find a CEO

1 and then ultimately came back and said, How about you
2 being the CEO?

3 I got this relationship with Cerberus and
4 others. I'm doing other things. I'm not interested in
5 giving that stuff up.

6 He spoke with Cerberus. Feinberg left any
7 number of messages. Had conversations. Spoke with me.
8 And I said to Don, Look, if I come in here and save this
9 thing, you haven't been able to do it. Rick Smith
10 hasn't been able to do it. And there was some guy
11 before that that hadn't been able to do it.

12 So if I could come in and save this firm and
13 all those thousands of jobs, save this enterprise,
14 generate earnings and cash flow and sales and mix and
15 improve this thing from A to Z, I'd like to be rewarded
16 for that.

17 And I didn't like what he had proposed. I
18 said, you know, what if I get an upside or get an
19 opportunity to earn something on Cerberus's position?

20 And he thought about it. We talked about it a
21 couple of times. And he said, It would be okay if it
22 was on your equity position.

23 So I went back to Cerberus and said, I'd like
24 an opportunity to be recognized if my performance
25 generates an improvement and saves this company.

1 You know, in the end he didn't agree with it.
2 And in the end, Don didn't agree with what was being
3 talked about. In the end, I signed an agreement with
4 Cerberus that excluded Coram.

5 And I signed an agreement with Coram that drew
6 a bright line that said if I got paid on Coram, I get
7 paid from Coram. And that's -- you know, up until you
8 guys stiffed me, that's what -- I think I earned
9 something close to 17 million bucks that I didn't get
10 paid for the work I did on that formula.

11 And then the board resolved bonuses and
12 contract and -- I mean, I did my part. Everybody
13 benefitted except me, you know.

14 Q. I'll get to that comment in a minute.

15 A. But could I ask a question?

16 Q. In the November 12 letter --

17 MR. PETERS: Hold on.

18 THE WITNESS: Could I ask a question before you
19 ask me a question? I've got to use the bathroom.

20 MR. BARKASY: We can -- just ask for a break.

21 THE WITNESS: I need a break.

22 THE VIDEOGRAPHER: This marks the end of Tape 2
23 in the deposition -- Volume I in the deposition of
24 Daniel Crowley at 1:58. Going off the record.

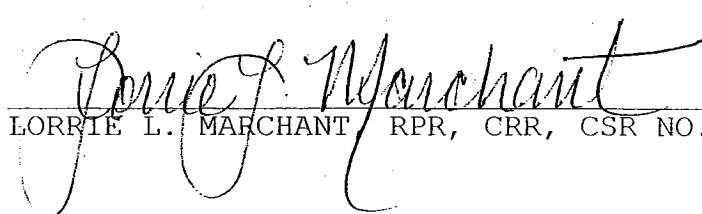
25 (Recess taken, from 1:58 to 2:10.)

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, LORRIE L. MARCHANT, RPR, CRR, CSR NO. 10523,
3 duly authorized to administer oaths pursuant to Section
4 8211 of the California Code of Civil Procedure, hereby
5 certify that the witness in the foregoing deposition
6 was by me sworn to testify to the truth, the whole truth
7 and nothing but the truth in the within-entitled cause;
8 that said deposition was taken at the time and place
9 therein stated; that the testimony of said witness was
10 reported by me and was thereafter transcribed by me or
11 under my direction by means of computer-aided
12 transcription; that the foregoing is a full, complete
13 and true record of said testimony; and that the witness
14 was given an opportunity to read and correct said
15 deposition and to subscribe same.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named, nor in any way
19 interested in the outcome of the cause named in said
20 caption.

21 IN WITNESS WHEREOF, I have hereunto subscribed
22 by my hand this 12th day of April, 2007,

23 
24 LORRIE L. MARCHANT RPR, CRR, CSR NO. 10523

Danitz, Scott R.

4/6/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Certified Copy

Case No. 04-1565

VIDEO DEPOSITION OF SCOTT R. DANITZ
April 6, 2007

ARLIN M. ADAMS, Chapter 11 Trustee of the
Post-Confirmation Bankruptcy of Estates of Coram
HEALTHCARE CORPORATION, and of CORAM, INC., a
Delaware corporation,
Plaintiffs,

vs.

DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J.
CASEY, L. PETER SMITH, and SANDRA L. SMOLEY,

Defendants.

APPEARANCES:

SCHNADER HARRISON SEGAL & LEWIS, LLP
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Appearing on behalf of Defendant
Daniel D. Crowley.

Also Present: Carie Finegan, Videographer

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1 can answer.

2 A Yes.

3 Q (By Ms. Mims) Was CPS using more cash
4 than it was generating?

5 A I don't have the -- I don't have any of
6 the financial information in front of me at this
7 point in time. What I seem to recall was that they
8 were -- it was a negative EBITDA at the time. So a
9 negative earnings before interest, taxes,
10 depreciation and amortization. So a loss.

11 Q Is EBITDA, as you've just defined it, a --
12 a measure of -- of profit or loss?

13 A It's one measure of profit or loss.

14 Q Was it a measure that was used frequently
15 at Coram?

16 A Yes.

17 Q Is it used at other companies?

18 A Yes.

19 Q Why was it used at Coram?

20 A I wasn't involved in the decision making
21 as to why it was used at Coram. It's just in -- in
22 the financial world, it's a means of identifying
23 how -- it's a measurement of generating cash. It
24 might not be the true measurement of cash flow, cash
25 receipts and -- and disbursements and net cash flow,

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1 but it's a financial measurement that's used,
2 commonly used.

3 Q During 1999 was there a decision -- do you
4 know if a decision was made to offer CPS for sale by
5 Coram?

6 A Yes.

7 Q Do you know who made that decision?

8 A I don't know the individuals. I -- I know
9 it was the senior executives and the board of
10 directors.

11 Q Was -- do you know when that decision was
12 made?

13 A I -- it was in 1999. I don't recall what
14 month.

15 Q Was it prior to when Dan Crowley became
16 CEO of Coram?

17 A Yes.

18 Q So by senior executives, do you mean the
19 individuals you previously mentioned, Don Amaral,
20 Rick Smith and Wendy Simpson?

21 A Yes, and there were a couple others, as
22 well.

23 Q Do you recall who?

24 A I -- for certain, no, I don't.

25 Q Do you know why the decision was made to

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1 A Yes.

2 Q Turn to the next page, which is Chapter 11
3 TRUSTEE 000362. This page is also entitled "Coram
4 in 1999 (continued)," correct?

5 A Yes.

6 Q The first bullet point reads, "Negative
7 cash flow from operations." Do you have an
8 understanding of what that means?

9 A Yes.

10 Q What does it mean?

11 A On a cash flow statement, there's various
12 categories of identifying cash inflow and outflow,
13 and the first category is cash generated from
14 operations, so the -- the -- the business as it --
15 as it stands operationally, and -- and it was
16 negative. It was not generating cash, it was using
17 cash.

18 Q Do you have an understanding of why that
19 was the case?

20 A Yes. It would have been the reasons I've
21 described before.

22 Q The next bullet point states, "CPS using
23 cash, diverting management from core (profitable)
24 business"?

25 A Yes.

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1 Q Do you agree with that characterization?

2 A Yes.

3 Q Under that bullet point, I guess there's a
4 sub bullet, it reads, "CPS had 13% gross margin vs.
5 base business, which can run at 29% gross margin."
6 Did you or your department provide those values?

7 A Yes.

8 Q What does that statement mean, if you
9 know?

10 A The revenue less the direct cost of its
11 drugs, and there might be some other costs involved
12 with that. The -- CPS just had lower margins and
13 was less profitable than the infusion business at
14 that point in time.

15 (Pause.)

16 Q Let's turn to Chapter 11 TRUSTEE 000365.

17 A Yes.

18 Q This page is also entitled "Coram in
19 1999," with an abbre -- abbreviation for continued,
20 correct?

21 A Yes.

22 Q The second bullet point states, "NYSE
23 threatening to" dis -- de-list" share -- "shares."
24 Do you know what that refers to?

25 A Yes.

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1 compete in terms of its levels of operations from a
2 revenue standpoint and a profitability standpoint,
3 and the public market, the investors were
4 recognizing that as they traded in the marketplace
5 for Coram stock, and that had an impact on the value
6 of the stock in the marketplace.

7 Q Was the value of the stock low?

8 MR. BRESSLER: Object to the form, but he
9 can answer.

10 A Low to -- compared to what?

11 Q (By Ms. Mims) Okay.

12 (Pause.)

13 Q The fourth bullet point states,
14 "Borderline for Stark II exception." Do you know
15 what that refers to?

16 A Yes.

17 Q What does that mean?

18 A Stark II was a regulatory requirement that
19 required Coram to have a minimum of \$75 million of
20 stockholders equity, and at that time it was nearing
21 the low -- nearing the \$75 million level, to where
22 if it fell below that, then it wouldn't qualify
23 under the Stark II requirements.

24 Q Was it important for Coram to qualify
25 under the Stark II requirements?

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1 A Yes.

2 Q Why?

3 A We received referral sources from Medicare
4 and Medicaid, referrals from physicians, and under
5 the -- my understanding of the Stark II law is if
6 you do not qualify under Stark II with the minimum
7 equity requirement, you can no longer receive those
8 referrals for Medicare, and then actually Medicaid
9 would fall in place as well.

10 Q Was the Medicare/Medicaid business a
11 significant portion of Coram's business?

12 A Yes.

13 (Pause.)

14 Q Handing you what will be marked Exhibit 3,
15 Danitz Exhibit 3. It's a letter dated
16 December 15th, 1999 to Ernst & Young. The Bates
17 stamp is COR-EQTY 0001681 through 1683.

18 (Exhibit No. 3 marked for
19 identification.)

20 Q (By Ms. Mims) Please review that document
21 and --

22 A All right.

23 Q -- let me know when you're ready.

24 (Pause.)

25 MR. BRESSLER: Is this a good time, while